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Review of the inputs to the substantive preparatory process and the International Conference on Financing for Development

Technical notes

Note by the Secretary-General

Addendum

Technical note No. 2:* Existing proposals for international cooperation to combat corruption, including repatriation of illegally transferred funds to the countries of origin

I. Introduction

1. In its most recent reports, the United Nations Centre for International Crime Prevention has indicated that, in recent years, the international community has demonstrated an increased awareness of the problems associated with corruption and a determination to combat it. The academic and policy literature has been greatly enriched through studies, analysis and academic publications, which have reached and highlighted some common and basic conclusions. Corruption is seen to be multifaceted and to affect every society regardless of its level of development or the sophistication of its organization. While the underlying causes may range from the societal to the institutional, one conclusion shared by most is that corruption exacerbates other problems and derails development efforts, while it wreaks havoc on efforts to build, consolidate or further develop democratic institutions.

2. Recent developments in the political and economic spheres seem to have had two major consequences. Firstly, the phenomenon is no longer confined within national borders and, secondly, the levels of tolerance worldwide, of both the political leadership and the public at large, seem to be dropping

* The preparation of the present technical note was coordinated in the Financing for Development Coordinating secretariat. Staff from the following entities collaborated, in a personal capacity, in its preparation: the United Nations Centre for International Crime Prevention, the Department of Economic and Social Affairs of the United Nations Secretariat, the International Monetary Fund (IMF), the Organisation for Economic Cooperation and Development (OECD), the United Nations Development Programme (UNDP) and the United Nations Conference on Trade and Development (UNCTAD). Several sections contained in the most recent report of the Centre for International Crime Prevention are reproduced extensively in this note because of their relevance.

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rapidly. This has been coupled with consistent and strong calls for action against the phenomenon at all levels.

3. Analysis of the existing instruments, recommendations and other documents reflects several similarities in structure, themes and language. Those similarities may be an indication of the fact that in efforts against corruption common problems have been confronted and the negotiation process has produced comparable solutions, despite the different contexts in which the solutions have been considered.

4. Most of the intergovernmental organizations through which the existing international legal instruments have been developed are regional. Thus, the instruments have been developed by countries facing similar problems and sharing, at least to a certain degree, similar legal practices. The Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[1] with signatories from five continents notably has a wider geographical coverage. One global legal instrument with anti-corruption provisions in which developing countries from all regions presently participate fully is the United Nations Convention against Transnational Organized Crime.[2]

5. Proposals for global action on corruption have been developing quite rapidly, inter alia, since the inception of the financing for development process. Most recently and significantly, in August 2001, the United Nations Centre for International Crime Prevention hosted the Intergovernmental Open-ended Expert Group to Prepare Draft Terms of Reference for the Negotiation of an International Legal Instrument against Corruption, which met to make recommendations on the scope and coverage of an international legal instrument against corruption (as requested by the General Assembly in its resolution 55/61) and to consider issues related to illegally transferred funds and the repatriation of such funds to their countries of origin (as requested by the Assembly in its resolution 55/188). The recommendation of the Expert Group that States Members of the United Nations forge a new, legally binding international convention against corruption by the end of 2003, as contained in the report of its meeting held in Vienna from 30 July to 3 August 2001 (A/AC.260/2), will be transmitted to the Assembly at its fifty-sixth session through the Commission on Crime Prevention and Criminal Justice at its reconvened tenth session.

6. In its draft resolution brought to the attention of the General Assembly for consideration and action (see A/AC.260/2, sect. II), the Expert Group also proposed that the Assembly voice concern about the seriousness of the problems posed by corruption "which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development" (first preambular para.). The Expert Group noted that, while a number of regional arrangements and non-binding international declarations were already in place, no comprehensive instrument with force of international law currently existed. The treaty, as envisaged, would address many aspects of the problem, including preventive measures, criminalization, sanctions and remedies. The Expert Group likewise recommended that the negotiators of the convention should also be asked to consider provisions on jurisdiction, seizures, protection of witnesses, liability of legal persons, transfer of illicitly obtained funds abroad, return of such funds and a range of international cooperation measures.

7. The present technical note refers first to the work of the United Nations regarding proposals relating to corruption, and illicit transfers of funds and the return of such funds to the countries of origin. Then, the corresponding proposals from other institutions and organizations are presented. The note quotes and draws extensively from the documentation prepared by secretariat of the Centre for International Crime Prevention for the expert group meeting, particularly the most recent comprehensive report on existing international legal instruments and recommendations addressing corruption.[3] The note does not address the range of technical assistance programmes offered by the United Nations system to aid Governments in combating corruption.[4]

II. Proposals

Within the United Nations

8. In the report of the Secretary-General to the Preparatory Committee for the International Conference on Financing for Development (A/AC.257/12) of 18 December 2000, the link between

respecting domestic laws and financial regulations and the mobilization of domestic resources was underscored. The report recommended that "member States should strengthen measures to fight corruption at the national and international levels, including through enhanced international cooperation. In this regard, they should call for expeditious completion of preparatory work for the elaboration of an international legal instrument against corruption under the aegis of the United Nations — independent of the United Nations Convention against Transnational Organized Crime — and for the convening of a conference for the negotiation of the corresponding legal instrument by the earliest possible date (box between paras. 26 and 27)".

9. For its part, the report of the High-level Panel on Financing for Development (see A/55/1000) issued on 26 June 2001 highlights, in its executive summary, the point that "every developing country needs to set its economic fundamentals in order. No country can expect to achieve equitable growth, or to meet the International Development Goals, unless it focuses on building effective domestic institutions and adopting sound policies including: governance that is based on participation and the rule of law, with a strong focus on combating corruption" (see principal recommendation 1). The same concern is also raised in the reports to the Preparatory Committee for the Conference of the regional consultative meetings on financing for development.

10. As indicated above, in its resolution 55/61 of 4 December 2000, the General Assembly recognized the desirability of an effective international legal instrument against corruption and requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of the future legal instrument against corruption. Subsequently, in its resolution 55/188 of 20 December 2000, entitled "Preventing and combating corrupt practices and illegal transfer of funds and repatriation of such funds to the countries of origin", the Assembly invited the intergovernmental open-ended expert group convened in accordance with Assembly resolution 55/61 to include an examination, on the same basis, of the question of illegally transferred funds and the repatriation of such funds to the countries of origin.

11. The report and recommendations of the Expert Group will be transmitted to the General Assembly at its fifty-sixth session through the Commission on Crime Prevention and Criminal Justice. As previously indicated, the main recommendation of the Expert Group is that Member States of the United Nations forge a new, legally binding international convention against corruption by the end of 2003.

12. At the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna from 10 to 17 April 2000, the issue of corruption was also addressed, both in the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,[5] and in the workshop on combating corruption,[6] organized by the United Nations Interregional Crime and Justice Research Institute in cooperation with the International Scientific and Professional Advisory Council.

13. In adopting the Vienna Declaration, Member States committed themselves to taking enhanced international action against corruption and stressed the urgent need to develop an effective international legal instrument against corruption (para. 16). There was general agreement on the importance of transparency and the independence and integrity of investigative and subsequent criminal justice processes (para. 154). The discussion highlighted the need for justice to be applied to past activities, including financial recovery of the proceeds of corruption, proper investigation, prosecution and the application of effective criminal and/or non-criminal sanctions (para. 155). At the same time it was considered necessary to provide appropriate prevention measures for the future, including the strengthening of civil society (including the media and the private sector), decreasing opportunities for corruption of high- and low-level officials, improving their status and providing social rewards for those who were not corrupt in the performance of their duties (para. 156).

14. The Expert Group Meeting on Corruption and its Financial Channels, that met in Paris from 30 March to 1 April 1999 (as requested by the Economic and Social Council in its resolution 1998/16 of 28 July 1998) explored means of ensuring that recent multilateral initiatives against corruption were effective and that an appropriate international strategy against corruption, including the proceeds thereof, was formulated in consultation with other intergovernmental organizations active in the area. After identifying a set of measures to improve international cooperation in combating corruption and the detection of financial

flows related to corruption, the Expert Group made a series of recommendations to be taken both at the international and at the national level (see E/CN.15/1999/10, sects. B, D and E).

15. At the international level, the Expert Group, inter alia, stressed the need to explore ways and means of persuading all insufficiently regulated financial centres to adopt rules enabling them to trace and take action against the proceeds of corruption, to participate actively in international cooperation efforts against related financial crime and, if necessary, to consider the introduction of measures to protect the global financial system from centres that posed the most significant problems or that did not participate in international cooperation (para. 13 (d)).

16. At the national level, the Expert Group recommended that corruption in all its forms should be criminalized and that bribe-givers and the proceeds of corruption should be covered under anti-money-laundering laws (para. 14 (a)); steps should be taken to ensure that bank secrecy and tax provisions did not hamper international administrative and judicial cooperation in combating corruption as well as to ensure that the authorities possessed sufficient capacities to provide prompt judicial cooperation in cases involving corruption or the laundering of the proceeds of corruption (paras. 14 (f) and (g)); and the capacity of States to prevent their financial systems from being used by bribe-givers and bribe-takers to transfer or launder money related to corrupt deals should be strengthened through the establishment of systems for the appropriate regulation and supervision of financial activities, based on internationally accepted principles (para. 14 (h)).

17. In addition, the Expert Group proposed the use of comprehensive systems for the prevention of money-laundering and the detection of illicit financial flows in combating corruption, including, in particular, the requirement that financial institutions should identify their customers, exercise vigilance and report suspicious transactions to a competent authority responsible for their investigation (para. 14 (j)).

18. In December 1996, the General Assembly adopted two important instruments in the fight against corruption: the International Code of Conduct for Public Officials[7] (resolution 51/59, annex) and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions[8] (resolution 51/191, annex). Although both instruments are non-binding, they are still politically relevant, as they represent a broad agreement in the international community on these matters.

19. Regarding illicit transfers, in its resolution 55/188 the General Assembly called for increased international cooperation with regard to devising ways and means of preventing and addressing illegal transfers, as well as repatriating illegally transferred funds to the countries of origin, and called upon all countries and entities concerned to cooperate in that regard. As already mentioned above, the Assembly also invited the intergovernmental open-ended expert group, which was to prepare draft terms of reference for the negotiation of a future legal instrument against corruption pursuant to Assembly resolution 55/61, to include examination of the question of illegally transferred funds and the repatriation of such funds to the countries of origin. The Expert Group has thus presented a proposal to address these matters in a comprehensive way, by including them in the new international convention whose negotiation is being recommended.

20. It is noted that policy proposals in this area have been affected by a number of vexing problems. According to the report of the Secretary-General (E/CN.15/2001/3) cited earlier, the question of illegally transferred funds resulting from corrupt practices commonly involve (a) immense amounts of wealth that represent a comparatively high proportion of the victimized country's resources; (b) the transfer of that wealth outside the country; (c) a high level of factual uncertainty regarding the countries and accounts holding the illicitly transferred wealth; (d) the correct identification of the legitimate beneficiary and titles for such assets; and (e) a complex of jurisdictional issues. Hence, the recommendation of the Intergovernmental Open-ended Expert Group that the newly proposed convention on corruption should also address, in a holistic approach, these issues.

21. The report of the Secretary-General also notes that policy recommendations relative to the repatriation of illegally exported funds by corrupt leaders need to address three broad categories: practical, political and legal difficulties. From the practical perspective, the Government seeking repatriation of funds does not always have the necessary financial resources to trace and recover them. In the global economy, funds are extremely mobile and can be hidden through secrecy and the use of multiple jurisdictions and tax havens.

When it comes to the sophisticated laundering and investment of wealth exported overseas, traditional investigative methods often prove ineffective. Sometimes, even promising "leads" are lacking. In some cases, when Governments cannot cover the legal expenses, they seek contingency fee arrangements with major law firms and, given the length and uncertainty involved in the repatriation process, these contingency fees have not yet provided a reliable modality.

22. When dealing with illegally transferred funds by public sector officials, the Government succeeding a corrupt leader often has to establish its legitimacy and obtain recognition by the international community, inter alia, by countries where the funds may have been deposited or invested. Moreover, in some cases, the victimized Government may not pursue the claims with the required vigour for fear of embarrassing members of the local political and economic elite whose role in reconstruction is considered vital. Therefore, given the socio-economic devastation such leaders often leave behind them, the new Government may be unable to comply with international "standards" in a prompt and timely manner.

Organisation for Economic Cooperation and Development

23. The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is a legally binding treaty that obliges signatory countries to establish the bribery of foreign public officials in international business transactions as a criminal offence under their national laws. It is open to adherence by both OECD and non-OECD member countries. It entered into force on 15 February 1999 and at present, 33 of the original 34 signatories have ratified the Convention.

24. It provides that bribery includes not only the payment but also the offer or promise of a bribe and sets out an autonomous definition of "foreign public official" which covers elected or appointed officials and officials exercising a public function such as the head of a public agency or company. Sanctions by signatory countries must be effective, proportionate and dissuasive and apply to both natural and legal persons. There are also some non-criminal provisions covering accounting requirements, external audit and company controls, and the tax non-deductibility of bribe payments. Countries are required to facilitate mutual legal assistance and to provide extradition.

25. All signatory countries are obliged to cooperate in a programme of systematic follow-up to monitor and promote the full implementation of the Convention. This monitoring programme is the responsibility of the Working Group on Bribery in International Business Transactions and includes regular reviews of countries' legislation to implement the Convention and their efforts to enforce the Convention in practice, the examination of specific issues that arise in the course of monitoring, and the regular provision of information to the OECD Council of Ministers and to the public at large through publication on the Internet of reports on individual country performance (see http://www.oecd.org/daf/nocorruption/instruments.htm)

26. The Anti-Corruption Network for Transition Economies assists Eastern European and successor countries of the former Soviet Union, through a policy dialogue over the Network's web site as well as annual meetings and specific seminars or workshops, in identifying appropriate political, institutional and economic reforms for combating corruption. The Stability Pact Anti-Corruption Initiative, co-chaired by OECD and the Council of Europe, calls for States in South-Eastern Europe to take measures to combat corruption by adapting laws and regulations in conformity with international instruments. The Asian Development Bank/OECD Anti-Corruption Initiative for Asia-Pacific calls for the development of a regional anti-corruption action plan aimed at strengthening national and regional efforts. The Anti-Corruption and Governance Initiative for Latin America, as a joint effort of the Organization of American States (OAS), the Inter-American Development Bank and OECD, aims at promoting stronger monitoring mechanisms in the implementation of international standards and provide a forum for regional policy dialogue.

27. OECD members had adopted a first Recommendation on Bribery in International Business Transactions in 1994. In 1997, the OECD Working Group on Bribery reviewed the 1994 Recommendation. The Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the OECD Council on 23 May 1997, is the result of analytic work on anti-corruption measures and commitments undertaken over the previous three years to combat bribery in international business transactions. The Revised Recommendation invites

financial institutions and that those laws or regulations are implemented effectively. Some recommendations aim at strengthening international cooperation and provide rules for administrative as well as for other forms of cooperation, such as the basis and means for cooperation in confiscation, mutual assistance and extradition.

32. In 2001-2002, FATF will continue an in-depth review of the Forty Recommendations for combating money-laundering. Upon completion of the review, FATF will undertake a third round of mutual evaluations of its members' anti-money-laundering systems against the revised Recommendations.

Organization of American States (OAS)

33. In 1996, OAS adopted the Inter-American Convention against Corruption (see E/1996/99). This broad Convention covers, among other issues, corruption of domestic public officials, bribery of foreign public officials in connection with economic or commercial transactions, mutual legal assistance and illicit enrichment. The report of the Secretary-General (E/CN.15/2001/3) has referred to the OAS Convention as "the most detailed on the prevention of corruption".

34. On mutual legal assistance, the OAS Convention provides that States parties, in accordance with their domestic laws and applicable treaties, shall afford one another the widest measure of mutual assistance and the widest measure of mutual technical cooperation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption (article XIII, paras. 1 and 2).

35. OAS is currently considering aspects related to the establishment of a regional monitoring mechanism to implement the different elements of the Convention.

Council of Europe

36. The Committee of Ministers of the Council of Europe agreed in 1997[11] to adopt the Twenty Guiding Principles for the Fight against Corruption. The Principles, which member States are called upon to implement in their efforts against corruption, contain guidance at both the national and international levels. They include elements such as (a) raising public awareness and promoting ethical behaviour; (b) ensuring coordinated criminalization of national and international corruption; (c) guaranteeing the appropriate independence and autonomy of those in charge of the prevention, investigation, prosecution and adjudication of corruption offences; (d) taking appropriate measures for the seizure and deprivation of the proceeds of corruption offences as well as for preventing legal persons from being used to shield corruption offences; and (e) limiting immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society.

37. In addition, the Committee of Ministers agreed on other measures such as (a) promoting the specialization of persons or bodies in charge of fighting corruption and providing them with appropriate means and training to perform their tasks; (b) denying tax deductibility for bribes or other expenses linked to corruption offences; (c) adopting codes of conduct both for public officials and for elected representatives; (d) promoting transparency within the public administration, in particular through the adoption of auditing procedures appropriate to the activities of public administration and the public sector as well as of appropriately transparent procedures for public procurement; (e) guaranteeing that the media have freedom to receive and impart information on corruption matters; (f) ensuring that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption; and (g) ensuring that in every aspect of the fight against corruption, the possible connections with organized crime and money-laundering are taken into account.

38. On 11 May 2000, the Committee of Ministers of the Council of Europe adopted a recommendation (Recommendation No. R (2000) 10) on codes of conduct for public officials, which includes, in the appendix, the model code of conduct for public officials. The Committee of Ministers recommended that the member States promote, subject to national law and the principles of public administration, the adoption of national codes of conduct for public officials based on the model code of conduct for public officials contained in the appendix to the Recommendation.

Organization of African Unity (OAU)

39. The OAU Summit on 11 July 2001 adopted A New African Initiative: Merger of the Millennium Partnership for the African Recovery Programme (MAP) and Omega Plan. Two parts of this Initiative directly address issues related to financial management and corruption. These institutional reforms will include effective measures to combat corruption and embezzlement and to implement judicial reform. MAP and the Omega Plan agreed to create a Task Team from Ministries of Finance and Central Banks (para. 54.2) to review economic and corporate governance practices in the various countries and regions, and make recommendations on appropriate standards and codes of good practice for consideration by the Heads of State Implementation Committee.

40. The African leaders also articulated their view of some of the responsibilities and obligations of the developed countries and multilateral institutions. One element of these obligations is that these countries and institutions should set up coordinated mechanisms to combat corruption effectively, as well as commit themselves to the return of monies (proceeds) of such practices to Africa.

International Monetary Fund (IMF)

41. The Executive Board of the International Monetary Fund (IMF) discussed (13 April 2001) how the Fund could enhance its contributions to the global efforts against money-laundering. In preparation for that discussion, staff papers on financial system abuse, and financial crime and a background paper on money-laundering,[12] and a joint Fund/Bank workshop on financial abuse[13] were prepared.

42. The IMF Executive Board agreed that money-laundering is a problem of global concern, which affects major financial markets as well as smaller ones, and that to address it, international cooperation should be stepped up. The Directors also agreed that the Fund has an important role to play in protecting the integrity of the international financial system, inter alia, through efforts to combat money-laundering, and recognized that more vigorous national and international efforts to counter money-laundering are needed. These efforts should encompass the promotion of sound financial systems and good governance, the design and implementation of judicial and legal reform and other related capacity-building programmes, and effective law enforcement. It was also pointed out that financial regulation and supervision, based on internationally recognized standards, play an important role in preventing financial abuse, including money-laundering.

43. The IMF Executive Board considered that intensifying the focus on anti-money-laundering elements in supervisory principles will help ensure that financial institutions have in place the management and risk control systems needed to deter financial abuse. It noted that financial sector supervisory principles already assessed under the Financial Sector Assessment Program (FSAP) include elements that are relevant to money-laundering and endorsed the proposal to develop a methodology that would enhance the assessment of financial standards relevant for countering money-laundering and that could be used for preparing reports in each FSAP on observance of all relevant principles. It was noted that the recently approved expansion of the FSAP and the ongoing offshore financial centre (OFC) assessments would allow an increasing number of members to benefit from the Fund's work on strengthening financial systems and countering money-laundering.

44. IMF Directors stressed that money-laundering issues should continue to be addressed in Fund surveillance when they have macroeconomic effects, including effects arising from financial instability and reputational damage. Some considered that the cross-border implications of money-laundering should be raised during Article IV consultations when they had significant externalities for other countries, even if they were not macroeconomically relevant for the member concerned. In this context, the Directors agreed that more research into the magnitude and the economic consequences of financial abuse, including money-laundering, should be encouraged. The IMF Executive Board called on all Governments, especially those with responsibilities for major financial markets, to put in place the necessary measures to counter money-laundering. It endorsed the staff's proposals for increased cooperation with FATF and regional anti-money-laundering task forces, including those relating to the exchange of information with these groupings.

Basel Committee on Banking Supervision

45. Only a relatively small part of the work of the Basel Committee on Banking Supervision is related to the issue of corruption. However, from the perspective of sound risk management, the Committee has issued guidance on money-laundering and "know-your-customer" practices for banks. That guidance seeks to prevent the laundering of illicit moneys, including those derived from corruption, through the financial system.

46. The Committee's guidance is contained in three documents. "Prevention of criminal use of the banking system for the purpose of money-laundering" (1988) outlines the basic ethical principles and encourages banks to put in place effective procedures to identify customers, refuse suspicious transactions and cooperate with law enforcement agencies. The 1997 "Core principles for effective banking supervision" state that banks should have adequate policies, practices and procedures in place, including strict know-your-customer rules. Specifically, supervisors should encourage the adoption of the relevant recommendations of FATF related to customer identification and record-keeping, increased diligence by financial institutions in detecting and reporting suspicious transactions and measures to deal with countries with inadequate anti-money-laundering measures. The 1999 "Core principles methodology" elaborates upon the 1997 "Core principles" by listing a number of essential and additional criteria. In January 2001, a "consultative paper" was issued setting out guidance for banks and banking supervisors on customer due diligence to help guard against financial system abuses (including money-laundering). It can be seen at http://www.bis.org.

Southern African Development Community

47. The heads of State and Government of the member States of the Southern African Development Community (SADC) have proposed an SADC protocol against corruption.[14] The three policy goals of the protocol are, inter alia:

(a) To promote and strengthen the development, by each of the States parties, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sectors;

(b) To promote, facilitate, and regulate cooperation among the States parties to ensure the effectiveness of (national) measures and actions (against corruption);

(c) To foster the development and harmonization of policies and domestic legislation of the States parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors.

Global Coalition for Africa

48. On 23 February 1999, representatives of a number of African countries met in Washington, D.C., under the auspices of the Global Coalition for Africa and co-sponsored by the Government of the United States of America, to discuss collaborative frameworks to address corruption. After discussion, the African participants, representing 11 countries (Benin, Botswana, Ethiopia, Ghana, Malawi, Mali, Mozambique, Senegal, South Africa, Uganda and the United Republic of Tanzania), agreed on 25 principles to combat corruption.

49. The introductory principles provide that Governments should demonstrate the leadership and political will to combat and eradicate corruption in all sectors of government and society by improving governance and economic management, by striving to create a climate that promotes transparency, accountability and integrity in public[15] as well as private endeavours and by restoring popular confidence in the government. Governments should also establish budgetary and financial transparency and strong financial management systems. Governments are also called upon to enact and enforce criminal laws that will deal effectively with corruption offences by imposing severe penalties on individuals convicted of corruption or corrupt practices and on business entities found to be involved in such practices. The Governments are also called upon to enact and enforce criminal and civil laws that provide for the recovery, seizure, forfeiture or confiscation of property and other assets acquired through corruption, and provide enhanced mutual assistance to Member States.[16]

50. The principles also advocate the control of corruption in the private sector by stating that

companies and organizations should be required to maintain adequate and accurate financial books and records and to adhere to internationally accepted standards of accounting. Self-regulating codes of conduct for different professions, including those in the private sector, should be established and enforced. The principles recommend that Governments promote standards for corporate governance and the protection of shareholder rights, and prohibit individuals found guilty of corruption from bidding on public contracts or otherwise doing business with Governments.

51. The principles support both the involvement and participation of civil society, on a continuous basis, in the formulation, execution and monitoring of anti-corruption reform programmes and the public's right to information about corruption and corrupt activities through protection of the freedom of the press and effective parliamentary oversight and scrutiny. Finally, it was recommended to establish government-to-government mechanisms to monitor implementation of the principles, including a mutual reporting and evaluation process.

Group of Eight

52. At the Genoa G-8 summit meeting (July 2001), the Heads of State and Government of these countries stated their agreement as follows: "Open, democratic and accountable systems of governance, based on respect for human rights and the rule of law, are preconditions for sustainable development and robust growth. Thus, we shall help developing countries promote: (a) accountability and transparency in the public sector; (b) legal frameworks and corporate governance regimes to fight corruption; (c) safeguards against the misappropriation of public funds and their diversion into non-productive uses; (d) access to legal systems for all citizens, independence of the judiciary, and legal provisions enabling private sector activity; (e) active involvement of civil society and non governmental organizations (NGOs); and (f) freedom of economic activities. We, for our part, will (a) implement fully the OECD Bribery Convention; (b) support efforts in the United Nations to pursue an effective instrument against corruption; and (c) encourage multilateral development banks (MDBs) to help recipient countries strengthen public expenditure and budget management."[17]

Global Forum on Fighting Corruption and Safeguarding Integrity

53. The second Global Forum on Fighting Corruption and Safeguarding Integrity was held from 28 to 31 May 2001 in The Hague, the Netherlands. The purpose of the Forum was to strengthen efforts to combat corruption and secure public integrity among government officials, in particular justice and security officials.[18]

54. The Forum recommended, inter alia, that Governments should adopt, widely publicize and enforce legislation and procedures that provide the public and the media in the best possible way an optimum degree of access to information relevant to fighting corruption. The media, civil society and the private sector are indispensable partners for government in this endeavour. The Forum felt that it is evident that national parliaments and local administrations have an important role to play in ensuring high standards of integrity. Financing election activities and political parties should be transparent so as to prevent corruption.

55. In the Forum's findings, government organization and procedures should be designed in a manner that reduces opportunities for corruption and creates incentives for public integrity. This could be stimulated through the establishment of a comprehensive public sector integrity policy that envisages the management of public services through a merit-based, professional and impartial civil service, with appropriate recruitment and retention systems and codes of conduct governing ethical behaviour. Further measures that effectively promote integrity and prevent corruption among public officials can be strategically selected from a broad array of integrity practices. Parallel to the foregoing, the adoption of a private sector integrity policy is necessary. This policy should envisage, in particular, effective measures that discourage the misuse of legal persons for purposes of corruption and related offences. In this respect, participants considered appropriate the further exploration of the ability of Governments to exclude legal persons convicted of corruption offences from entitlement to public benefits or aid, and the ability to identify persons convicted of corruption offences and disqualify them from acting as directors of legal persons.

Notes

[1] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

[2] General Assembly resolution 55/25, annex I.

[3] Existing international legal instruments, recommendations and other documents addressing corruption: report of the Secretary-General (E/CN.15/2001/3 and Corr.1), 2 April 2001.

[4] For information on technical assistance in this area see *Anti-Corruption Tool Kit* (Global Programme Against Corruption, Centre for International Crime Prevention, Vienna, version 1, June 2001); *Public Service Ethics in Africa*, Vol. 1 (Department of Economic and Social Affairs of the United Nations Secretariat, Division for Public Economics and Public Administration, New York, 2001, ST/ESA/PAD/SER.E/23); and UNDP and World Bank programmes.

OECD also has an active programme of cooperation with non-OECD countries to help improve the rule of law, raise citizens' confidence in the fairness and impartiality of public administration and promote economic growth through transparent and competitive markets. The principal activities are (a) raising awareness of international anti-corruption efforts and developing a strategic knowledge about anti-corruption tools and (b) promoting regional anti-corruption mechanisms. These outreach activities are carried out in conjunction with different other international organizations as well as private sector, trade union and civil society associations.

[5] See *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8), chap. I, resolution 1.

[6] Ibid., chap. VI, sect. A.

[7] The International Code of Conduct for Public Officials has been adopted as a tool to guide Member States in their efforts against corruption through a set of basic recommendations that national public officials should follow in the performance of their duties. The Code deals with the following aspects: (a) the general principles that should guide public officials in the performance of their duties (namely, loyalty, integrity, efficiency, effectiveness, fairness and impartiality); (b) conflict of interest and disqualification; (c) disclosure of personal assets by public officials, as well as, if possible, by their spouses and/or dependants; (d) acceptance of gifts or other favours; (e) the handling of confidential information; and (f) the political activity of public officials, which, according to the Code, shall not be such as to impair public confidence in the impartial performance of the functions and duties of the public official.

[8] The United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191, annex) includes a set of measures that each country could implement at the national level, in accordance with its own constitution, fundamental legal principles, national laws and procedures, to fight against corruption and bribery in international commercial transactions.

The Declaration addresses the bribery of foreign public officials. According to paragraph 3 of the Declaration:

3. Bribery may include, inter alia, the following elements:

"(a) The offer, promise or giving of any payment, gift or other advantage, directly or indirectly, by any private or public corporation, including a transnational corporation, or individual from a State to any public official or elected representative of another country as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction;

"(b) The soliciting, demanding, accepting or receiving, directly or indirectly, by any public official or elected representative of a State from any private or public corporation, including a transnational corporation, or individual from another country of any payment, gift or other advantage, as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction."

The Declaration contains different provisions aimed at combating the phenomenon, including the adoption or, where they already exist, enforcement of laws prohibiting bribery in international commercial transactions; and the criminalization of such bribery as well as the denial of tax deductibility of bribes paid by any private or public corporation or individual of a State to any public official or elected representative of another country.

In addition, Member States committed themselves to develop or maintain accounting standards and practices that improved the transparency of international commercial transactions; to develop or to encourage the development of business codes, standards or best practices that prohibited corruption, bribery and related illicit practices in international commercial transactions; to examine establishing illicit enrichment by public officials or

elected representatives as an offence; and to ensure that bank secrecy provisions did not impede or hinder criminal investigations or other legal proceedings relating to corruption, bribery or related illicit practices in international commercial transactions.

Finally, Member States committed themselves to cooperating and affording one another the greatest possible assistance in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions, including sharing of information and documents.

[9] The Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials invites member countries that allow the deductibility of such bribes to re-examine the issue with a view to denying such deductibility.

[10] See *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

[11] Resolution (97) 24 of 6 November 1997.

[12] IMF and World Bank, "Enhancing contributions to combating money laundering: policy paper", 26 April 2001 (http://www.imf.org/external/np/ml/2001/eng/042601.PDF).

[13] Financial abuse encompasses not only illegal activities that may harm financial systems, but also other activities that exploit the tax and regulatory frameworks with undesirable results. Financial crime can refer to any non-violent crime that generally results in financial loss. It includes not only financial fraud and tax evasion but also money-laundering which involves the processing of criminal proceeds to disguise their association with criminal activities.

[14] The Economic Community of West African States (ECOWAS) has also developed a protocol on the fight against corruption with a similar set of policy objectives. See A/AC.260/CRP.1.

[15] For example, in order to promote integrity of the public service, the principles call for (a) the elimination of conflicts of interest by adopting and enforcing effective national laws, guidelines, ethical regulations or codes of conduct for public officials, which include rules on conflict of interest and requirements for the regular disclosure of financial interests, assets, liabilities, gifts and other transactions; (b) undertaking necessary administrative reforms to restore the morale and integrity of the public service, for example, by ensuring merit-based recruitment and promotion policies and procedures and providing adequate benefits, including remuneration and pension schemes; (c) the promotion of transparency in procedures for public procurement and the sale or licensing of economic rights and interests by eliminating bureaucratic red tape, by providing for open and competitive bidding for government contracts, by prohibiting bribery and by adopting procedures for resolving challenges to the award of contracts or the sale or licensing of economic rights; and (d) the restoration and maintenance of the independence of the judiciary and ensuring adherence to high standards of integrity, honesty and commitment in the dispensation of justice through, among other things, adopting a judicial code of conduct.

[16] With regard to mutual legal assistance and extradition, the principles recommend that Governments adopt cooperative arrangements at the regional and/or subregional levels that provide for the mutual exchange of ideas, information, best practices, intelligence and experiences for the purpose of minimizing risks of cross-border corruption, including international business transactions. They should facilitate the cooperative investigation of cases involving corruption by rendering mutual legal assistance in obtaining evidence, documents, articles, records and witness statements.

[17] See G-8 final official notice available at http://www.genoa-g8.it/eng/attralita/primo_piano/primo_piano_13.html.

[18] Final Declaration, Global Forum on Fighting Corruption and Safeguarding Integrity II, The Hague, 28-31 May 2001 (reprinted in A/AC.260/CRP.2, 2 July 2001).

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